

April 26 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

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FILED

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*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

11  
12 **IN THE SUPREME COURT OF THE STATE OF MONTANA**  
13 **No. DA 09-0340**

14 ROBERT HILTEN and LYNN HILTEN, )  
15 )  
16 Plaintiffs and Appellants, )  
17 )  
18 v. )  
19 )  
20 ROY BRAGG, )  
21 )  
22 Defendant and Appellee )

UNOPPOSED MOTION  
FOR EXTENSION OF TIME FOR  
TRANSMISSION OF RECORD AND  
FOR ORDER VACATING AND  
RESETTING BRIEFING DEADLINE

23 Plaintiffs and Appellants Robert and Lynn Hiltten ("the Hiltens"), by and through their  
24 attorney of record, Jeffrey A. Simkovic, hereby move this Court for an extension of time for  
25 transmission of the record, pursuant to M. R. App. P. 9(3)(b) and for an Order vacating and  
resetting the current Supreme Court Briefing Deadline.

**As grounds:**

- 1  
2 1. In its Notice of Filing, dated March 31, 2010, the Clerk of the Supreme Court indicated  
3 that the Notice of Appeal in this case is deemed filed on March 29, 2010, which appears  
4 to be accurate. However, relying on the belief that "the record on appeal has already  
5 been transmitted," the Clerk began the briefing schedule and set an opening brief  
6 deadline for 30 days from March 31, 2010. The Clerk appears to have mistakenly  
7 perceived the record as currently transmitted to be a *complete* record when in fact it is  
8 not.
- 9 2. Unfortunately, the district court record on appeal received by the Supreme Court to date  
10 is not complete; it only dates back to July 2009 and does not include the more recent  
11 record of proceedings relating to a district court hearing (and subsequent order) in this  
12 case on December 18, 2009. The district court did not enter its final judgment in this  
13 case until March 31, 2010.
- 14 3. The district court proceedings on December 18, 2009, and the court order associated  
15 with that hearing, are the sources of substantive issues being raised on appeal.
- 16 4. The Hiltens have ordered a transcription of the December 18, 2009 proceedings and  
17 have followed up with requests for status updates on the transcription process. The  
18 district court reporter has advised that the transcript is still being prepared. No  
19 definitive completion date has been offered by the court reporter.
- 20 5. Due to the rapid approach of the briefing deadline, the Hiltens are unable to adequately  
21 prepare the brief in support of their appeal in the absence of transcripts from the  
22 December 18, 2009 hearing.  
23  
24  
25

- 1 6. The failure of the district court—due to the court reporter’s inability to timely prepare a  
2 transcript—to transmit the complete record on appeal to the Supreme Court and to  
3 make such record available to the parties is not the fault of the Hiltens.
- 4 7. In addition to an extension of time for transmission of the record by the district court,  
5 the Hiltens respectfully move the Court for an Order vacating and resetting the briefing  
6 schedule to allow the parties to prepare their briefs after completion of the December  
7 18, 2009 transcript.
- 8 8. No prejudice will result from an extension of time for transmission of the record or  
9 from rescheduling the appellate briefing deadlines.
- 10 9. Counsel for the Defendant-Appellee, Mr. Tom Singer, has been contacted with respect  
11 to this motion, and has expressed no opposition.

12  
13 DATED this 23 day of April, 2010.

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16 Jeffrey A. Simkovic  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 23 day of April, 2010 a true and correct copy of the enclosed and foregoing was mailed, via first class mail, postage prepaid to:

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